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IN THE

Supreme Court of the United States

October Term, 1970

No.

THE BOARD OF TRUSTEES OF THE SOCIAL SECURITY FUND OF THE DISTILLERY, RECTIFYING, WINE AND ALLIED WORKERS INTERNATIONAL UNION OF AMERICA, AFL-CIO, *Petitioner*

v.

FRANK J. FARRELL, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA EASTERN DISTRICT

Petitioner, The Board of Trustees of the Social Security Fund of the Distillery, Rectifying, Wine and Allied Workers' International Union of America, AFL-CIO, pray that a Writ of Certiorari issue to review judgment of the Supreme Court of Pennsylvania for the Eastern District entered on October 9, 1970, in Frank J. Farrell vs. The Board of Trustees of the Social Security Fund of the Distillery, Rectifying, Wine and Allied Workers' International Union of America, AFL-CIO.

OPINIONS BELOW

The majority and dissenting opinions of the Supreme Court of Pennsylvania are not yet reported. They are reprinted in the Appendix A, Pages 14-19, infra. The opinion of the Court of Common Pleas of Philadelphia is reprinted in Appendix B, Pages 20-26, infra.

JURISDICTION

The judgment of the Supreme Court of Pennsylvania was entered on October 9, 1970. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1257(3).

QUESTION PRESENTED

Does the construction and application of Section 2180 (a)(2) of the Pennsylvania Rules of Civil Procedure, allowing personal service upon foreign corporations or similar entities, by the Supreme Court of Pennsylvania in this case, violate the due process requirements of the Fourteenth Amendment?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves Section 2180(a)(2) of the Pennsylvania Rules of Civil Procedure and the Fourteenth Amendment to the United States Constitution. These are reprinted in pertinent part in Appendix C, Pages 27-28, infra.

STATEMENT OF THE CASE

A. The Factual Background

Petitioner, the Board of Trustees of the Social Security Fund of the Distillery, Rectifying, Wine and Allied Workers' International Union of America, AFL-CIO (hereinafter called Fund) is an unincorporated association created under the provisions of Section 302(c) of the Labor Management Relations Act of 1947, 29 U.S.C.A. Section 186(c) (R. 144a).[1] The Board of Trustees is composed of six (6) individuals who operate the Fund pursuant to a trust instrument in order to provide health, accident and death benefits for union members (R. 264a). Three of the Trustees are appointed by the Distillery, Rectifying, Wine and Allied Workers' International Union (hereinafter called "International"), and the other three Trustees are appointed by Employers who make contributions to the Fund (R. 264a, et seq.). All Trustees reside outside of Pennsylvania. The Fund's only office is in Englewood, New Jersey. The Fund is an entity separate and apart from the International, files reports under the Labor Management and Disclosure Act and has been qualified by the Internal Revenue Service as a separate charitable and beneficial entity. No other offices are maintained by the Fund. The Trust instrument in Section 2.7 of Article II asserts that the situs of the Trust Fund shall be the place where the principal office is located.

Local 136 is a subordinate entity or sub-division of the International and maintains its office at 918 Bankers Securities Building in Philadelphia (R. 99a, 94a). It occupies those offices under a lease with the owner. (R. 250a). The Local receives no funds from the Fund (R. 95a), and has only two employees—a business representative, Mr. Jacobs, and a clerk—Miss DiAngelo. (R. 64a, 95a). The legend and printing on the door of the office

[1] "R" refers to the Appendix to Appellant's Brief in the Court below.

indicates clearly that it is the office of Local 136 and there is no indication that the Fund is in any way connected with the office. There are only two telephone lines and both are used in the name of and paid for by the Local. (R. 96a). The Fund does not pay any of the rent for the office occupied by Local 136 nor does it pay any of its operational expenses.

Miss DiAngelo is paid by the Local (R. 64a, 65a), and works under the direction of Mr. Jacobs. She had worked for Local 136 for about three years and had never received any mail addressed to the Fund. (R. 70a).

While a supply of claim forms are on hand which the Fund supplies (R. 75a) for use of the membership, these forms are distributed on behalf of the membership and not on behalf of the Fund. (R. 81a, 82a).

While a Local Union may assist one of its members in processing a claim for benefits, the determination of whether the claim has merit or not is made by the Fund. The Local Union is not solicited for and does not make a recommendation. (R. 150a, 151a). The Fund does not provide any books, records or documents to Local Unions (other than claim forms), and Locals do not keep any records for the Fund. (R. 151a).

Each Local Union has a "Welfare Representative," appointed by the Board of Trustees of the Fund, upon recommendation of the Local. The Fund paid the Representative a sum based on employer contributions dealing with his Local. The duties of the Representative were purely clerical, consisting of forwarding claim forms to members and sending completed forms to the Fund and then distributing checks from the Fund to the members. He has no authority to pass on the merits of a claim, to make decisions for the Fund or bind it in any way (R. 155a). In fact, the Representative for Local 136, Henry Newman, was not performing those duties at the time service was made in this case, and Mr. Jacobs, the Secretary of the Local Union, was performing these duties on behalf of the Local members.

Miss DiAngelo maintained a record of all claims submitted by Local Union members in a "Note Book" purchased by the Local (reproduced at R.213a, et. seq.). Claims filed for Local members under another "Major Medical Plan" were also kept in the same book. The Fund did not require that such records be kept and did not know of the existence of the Note Book (R. 110a).

On January 9, 1968, Frank J. Farrell, formerly employed by Joseph E. Seagram and Sons, Inc., and a member of the International Union, filed a Complaint in Assumpsit alleging *inter alia*, the existence of a Health and Accident Insurance Policy issued by the Fund, under which Farrell claimed to be entitled to reimbursement for medical expenses and certain disability benefits from injuries incurred in an accident on December 9, 1963 (R.4a to 6a).

Thereafter, on February 2, 1968, the Sheriff attempted to make service on the Fund under Pennsylvania Rules of Civil Procedure §2180 (a)(2), by leaving a copy of the Complaint with Miss DiAngelo, the above-mentioned employee of Local 136, at the Office of the Local, Room 918, Bankers Securities Building, Juniper and Walnut Streets, Philadelphia, Pennsylvania.[2]

No Answer having been filed, Plaintiff Farrell took a default judgment against the Fund on April 30, 1968 and assessed damages in the amount of $18,118.49.

[2] The Sheriff's return stated "Served and Made Known to the Board of Trustees of the Social Security Fund of the Distillery Rectifying, Wine and Allied Workers International Union of America AFL-CIO, the within-named Defendant Company, by personally handing a true and attested copy of the within Complaint issued in the above-captioned matter to Miss DiAngelo, the agent, person for the time being in charge of the Defendant's usual place of business at Room 918 Bankers Securities Building, Juniper and Walnut Streets in the County of Philadelphia, State of Pennsylvania, on February 2nd, 1968, at 10:30 o'clock A.M.

B. Proceedings in the Courts Below

1. *The Court of Common Pleas, Philadelphia County*

On June 3, 1968, the Fund filed a Petition to Strike Off a Default Judgment, or in the alternative to Open the Said Judgment and Let Defendant into a Defense. An Answer to the Petition was filed and depositions taken. After the filing of briefs and oral argument, the above Court, per the Honorable Raymond Pace Alexander, handed down a decision on December 17, 1968, denying the Petition to Strike or Open the Judgment.

In the Court's Opinion, filed on March 27, 1969, Judge Alexander indicated that the main thrust of the Fund's argument was that the attempted service was ineffective. The Court found that there was a connection between the operation of the Fund and the office of Local 136 and that service was, therefore, proper in that the office was a "usual place of business of the Social Security Fund of the Union." (R.207a) On December 26, 1968 the defendant Fund filed a Notice of Appeal.

2. *The Supreme Court of Pennsylvania*

The appeal was argued before the Supreme Court on November 11, 1969 before the Court en banc. On October 9, 1970, the Court by a 4-2 vote affirmed the Judgment of the Court of Common Pleas of Philadelphia.

The Court held that under Pennsylvania Rule of Civil Procedure 2157(a), service was proper.[3] They con-

[3] The Court considered Section 2157(a) of the Pennsylvania Rules of Civil Procedure which states, "(a) Service of process upon an officer or a registered agent of an association, or upon the manager, clerk or other person for the time being in charge of any place where such association regularly conducts any business or association activity shall be deemed service upon the Association, provided that the person served is not a plaintiff in the action." This section is almost identical with the provisions of Section 2180 of the Rules which deals with service on corporation and similar

cluded that Mrs. DiAngelo was in charge of the office at the time of the service and that "Local 136's and Mrs. DiAngelo's connections with the Fund were sufficiently close and regular to permit service upon Mrs. DiAngelo to act as service upon the Fund." (See * * * Page 16, infra).

The Court considered the Fourteenth Amendment, Federal Constitutional impact of the argument in a footnote, stating that the only constitutional requirements for service of process were that it "be reasonably calculated to give the served party knowledge of the attempted exercise of jurisdiction and a chance to be heard," and "that any service valid within the terms of the rule (Pa. Rules of Civil Procedure §2157) meets the constitutional requirements." (See * * *, Page 15, infra).

It must be noted that throughout the proceedings in the lower Court and in the Supreme Court, the impact of the argument was such that the federal due process question was considered, although not specifically raised throughout.

The dissenting opinion, also filed on October 9, 1970, disagreed that the service in this case gave the Fund adequate notice and opportunity to be heard. Stating that "the requirements of due process of law mandate that our interpretation of Pennsylvania Rules of Civil Procedure §2157(a) be such that a defendant will be given adequate notice and opportunity to defend against the action," the minority of the Court went on to consider the facts of the case and the relationship between Local 136 and its employees and the Fund (See * *, Page 17, Dissenting Opinion, infra). Noting that the Local served only as a conduit for the Fund and that only clerical functions were performed which were totally non-discretionary and that no one at the office of the Local had any power to bind the

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entities and which was put forward by counsel or both sides as being the controlling section. Section 2180 speaks of "any office or usual place of business of the corporation or similar entity" while Section 2157(a) speaks of "any place where such association regularly conducts any business or association activity."

Fund, the Dissent reached the conclusion that the relationship between Local 136 and the Fund would not assure that there was due notice of a judicial proceeding in the instant case and that the service of process was, therefore, inadequate and improper.

REASONS FOR GRANTING THE WRIT

A. The construction of the State Service Rules by the Court below conflicts with the requirements of due process as established by the Fourteenth Amendment.

Despite the tendency to liberalize state authority over the activities of foreign corporations, the states are still faced with the limitations provided by the due process clause of the Fourteenth Amendment to the United States Constitution. *Williams v. Connolly*, 227 F. Supp. 539 (D. Minn., 3rd Div.) (1964); *Florio v. Powder Power Tool Corp.*, 248 F.2d 367 (3rd Cir.) (1957); *International Shoe Co. v. State of Washington*, 326 U.S. 310 (1945). If the provisions of the due process clause are not satisfied, then state jurisdiction, despite state legislation authorizing it, cannot be established over the activity of a foreign corporation.

This Court, in *International Shoe, Supra*, established the standards for state assertion of jurisdiction over foreign corporations, stating that whether due process is satisfied must depend upon the quality and nature of the activity in relation to the fair and orderly administration of the laws which it was the purpose of the due process clause to insure and thus on the contacts, ties or relations which the corporation has with the state. Such criteria aid in determining whether the foreign corporation has established sufficient minimal contacts within the forum state as to make it fair and reasonable for the corporation to answer for its obligations within that state and to make it subject to in personam jurisdiction within the state. We are not here concerned with whether or not the fund had established sufficient contacts within the state to make it amenable to process and suit in Pennsylvania. However, similar principles of due process must be applied to the method of service which was utilized to bring the Fund within the state's jurisdiction and

the propriety of the State Supreme Court in upholding such service.

The state statute relied upon in this case to uphold the service was Section 2180(a)(2) of the Pennsylvania Rules of Civil Procedure, providing for service ". . . to an agent or person for the time being in charge of, and only at, any office or usual place of business of the corporation or similar entity; . . ."[4] The main focus must be then on whether or not Mrs. DiAngelo was an agent or person in charge of the office or usual place of business of the Fund. A careful examination of the record indicates that the Fund and the Local Union were totally autonomous and that the people working at the Philadelphia office of the Local were employed only by the Local and engaged only in Local business. The Supreme Court of Pennsylvania went beyond the bounds of fundamental fairness and violated the requirements of due process by holding otherwise, apparently because of the minimal activities performed by the Local for the Fund as a clerical conduit between the Fund and the members of the union. Such a decision totally ignores the holdings of Federal and state cases establishing the necessity of a meaningful and substantial relationship between the foreign corporation and the alleged agent. These cases are clear that the two must be non-autonomous entities, the one acting in a "representative capacity" for the other. Nowhere in the record of this case has Local 196 been shown to be a non-autonomous department or an agent carrying on the business of the Fund as distinguished from its own business. *Kennan v. Metropolitan District Council*, 266 F. Supp. 497 (E. D. Pa.) (1966); *Louis Rachelson v. E. I. DuPont De Nemours Co. and Vic Mfg.*

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[4] Although the Supreme Court of Pennsylvania discusses the service in terms of Pennsylvania Rules of Civil Procedure §2157(a), dealing with associations, the two rules practically speaking are identical. We have chosen to discuss Section 2180(a)(2) because it was the language of this section that was utilized by the Sheriff in his return of service.

Co., 257 F. Supp. 257 (E. D. Pa.) (1966). We do not have a situation where the Local was in any way a creature of the Fund or subject to its authority. Nor do we have the constant stream of communication between the Fund and the Local as was found in *Spica v. International Ladies Garment Workers Union*, 388 Pa. 382 (1957). As the dissenting opinion in the Pennsylvania Supreme Court pointed out, there is an insufficient connection between the Local 136 and its employees to find that service on the Local would provide to the Fund the Constitutional requirement of notice and opportunity to defend. *Simon v. Craft*, 182 U.S. 427, 436, 21 S. Ct. 836, 839; *Miller v. Kiamesha Concord, Inc.*, 420 Pa. 604, 218 A. 2d 309 (1966); *Yoffee v. Golin*, 413 Pa. 154, 196 A. 2d 317 (1964); *Namie v. DiGirolamo*, 412 Pa. 589, 195 A. 2d 517 (1963).

In addition, the facts do not indicate nor warrant the construction that the offices of Local 136 are also the offices or usual place of business of the Fund. The record amply demonstrates that the office was solely that of the Local and that all business transacted there was done on behalf of the Local. The clerical functions performed for the Fund do not give rise to a sufficient connection between the two entities as to show that this was the "usual place of business of the Fund." *Myers v. Mooney Aircraft, Inc.*, 429 Pa. 177 (1967). Respondent and his attorney at all times knew the location of the offices of the Fund, but at no time did they attempt to serve the Fund directly or through the provisions of Section 1011B of the Pennsylvania Business Corporation Law of 1933, by serving a copy of the complaint on the Secretary of the Commonwealth (*Myers v. Mooney Aircraft*, supra). Service of process on a foreign corporation to subject it to in personam jurisdiction must be reasonable and should be only upon such agents as may properly be deemed representatives of the foreign corporation. *St. Clair v. Cox*, 1 S. Ct. 354, 101 U.S. 356 (1882). The Fund had no office in Philadelphia, the offices of the Local 136 were not

the offices of the Fund nor its usual place of business, nor could the employees of Local 136 be considered agents of the Fund. Any service upon them as substituted service on the Fund does not conform to the principles of natural justice and does not constitute due process of law as required by the Fourteenth Amendment.

B. Section 2180(a)(2) of the Pennsylvania Rules of Civil Procedure as construed and applied by the Supreme Court of Pennsylvania is Unconstitutional

It is a fundamental requirement of due process of law that a Defendant in a cause of action be given adequate notice of the action and an opportunity to be heard before a judgment can be entered against him. *Shelley v. Kraemer*, Mich. & Mo., 68 S.Ct. 836 334 U.S. 1, 92 L.Ed. 116 (1948), *Anderson National Bank v. Luckett*, Ky., 64 S.Ct. 599, 321 U.S. 233, 88 L.Ed. 692 (1944). This is particularly true and considerably more important where the Defendant is a non-resident and the forum state attempts to acquire in personam jurisdiction by way of substituted service. Any state legislative act providing for such service must be drawn and applied according to the requirements of the due process clause of the Fourteenth Amendment, and the Constitutional validity of such statute is dependent on whether the form of service provided for is reasonably calculated to bring notice of the suit to the foreign defendant. *Speir v. Robert C. Herd & Co.*, 189 F. Supp. 432 (1960).

Under the statute considered here, Section 2180(a)(2) Pa. R. Civ. P., allowing substituted service on non-residents, as applied and interpreted by the Pennsylvania Supreme Court, does not in any way guarantee or even require that the defendant be apprised of the action against him. Review of the majority opinion of the Pennsylvania Court amply demonstrates that this statute enables the state to deprive the non-resident defendant of his property by allowing a money judgment to issue against him, by condoning and fostering a method of substitute service

where the party served has only minimal contacts with the defendant and is under no legal obligation or duty to forward the notice to the defendant. The statute seems to anticipate that such a duty or obligation would exist because it makes no mention of the necessity that the complaint served on a substitute be forwarded to the true party defendant. The factual situation in the case at bar clearly indicates that not all alleged agents are legal representatives of the non-resident defendant or truly in charge of the local place of business of the non-resident defendant.

If this be the case and the statute still allows for substituted service on these parties, then there is no requirement in the statute which reasonably calculates that notice will ever reach the defendant. *Speir v. Robert C. Herd Co.*, supra. Such a statute and judicial interpretation and application of it is repugnant to traditional notions of fair play and substantial justice and is in direct violation of the Fourteenth Amendment.

CONCLUSION

It is clear from the record below and from the additional considerations advanced in this Petition, that the construction and application of the service of process rules by the Supreme Court of Pennsylvania substantially denies to the Petitioner its Constitutional rights of due process. And if the application is considered proper, then the statute and rules themselves must be considered repugnant to due process and in violation of the Fourteenth Amendment. Such a conflict with the clear dictates of due process and the Fourteenth Amendment should not be permitted to stand.

The Petition for Certiorari should be granted.

Respectfully submitted,

MERANZE, KATZ, SPEAR & BIELITSKY
By: BERNARD N. KATZ
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Attorneys for Petitioner

APPENDIX A

OPINION OF THE SUPREME COURT OF PENNSYLVANIA

Filed: October 9, 1970

ROBERTS, J.

Frank J. Farrell obtained a default judgment against the Social Security Fund of the Distillery, Rectifying, Wine and Allied Workers' Union, AFL-CIO, in an action which he brought to recover health and accident benefits allegedly due him on a policy issued by the Fund. This is an appeal by the Fund from its unsuccessful attempt to have the judgment opened or stricken because of an assertedly ineffective service of the complaint.

The Fund was created by the Union, through a trust agreement, in order to provide health, accident and death benefits for all Union members. Although the Fund provides benefits for members of all the Union's locals, located in about half of the fifty states, its only office is in New Jersey. To act as liaison between the Fund and the members of Local 136, a "Welfare Representative," Harry Newman, was appointed by the Board of Trustees of the Fund, upon recommendation of the Local.[1] The Fund paid Newman approximately $150.00 per month for his services as the welfare representative, but Newman's duties were *actually* performed through the Philadelphia office of Local 136, by Samuel Jacobs, the Local's business representative, and by Mrs. DeAngelo, Jacob's secretary.

In essence, these duties consisted of processing the benefit claims which were made by the Local's members against the Fund. A union member who had a claim to make would notify Jacobs, at the Philadelphia office, who would send the member a hospitalization form to be com-

[1] This is apparently the standard procedure throughout the country, each local having its own welfare representative.

pleted by the claimant and returned to Jacobs. The completed form, with any relevant attachments, would then be forwarded by Jacobs to the Fund's central office in New Jersey. If the Fund accepted the claim it would send a check, made payable to the claimant, to Newman at the offices of Local 136. Jacobs or Mrs. DeAngelo then made a notation of the check, and forwarded it to the union member. Thus, the only contact a member normally ever had with the Fund was through the Local 136 office in Philadelphia.

The injuries which form the basis of Farrell's claim against the Fund were incurred in an accident in Philadelphia on December 9, 1963. Farrell tried to settle his claim by the customary procedures, as outlined above, virtually all contacts being made through the Philadelphia office of Local 136. These attempts were unsuccessful, and he began the present action by filing a complaint against the Fund on January 9, 1968. On February 2, 1968, a copy of the complaint was served upon Mrs. DeAngelo at the Philadelphia office of Local 136, and, on April 30, 1968, the default judgment was entered. The Fund now claims that the judgment should be opened because Mrs. DeAngelo was not competent to receive service on behalf of the Fund. We disagree.

Under Pa. R. Civ. P. 2157(a), personal service upon an unincorporated association, such as the Fund, may be effected by "[s]ervice of process upon . . . the manager, clerk or other person for the time being in charge of any place where such association regularly conducts any business or association activity. . . ." Mrs. DeAngelo was certainly the person in charge of the office at the time of service, so our only question is whether the Philadelphia office of Local 136 may be construed as a place where the Fund regularly conducts "any business or association activity."[2]

[2] It is well settled that the only constitutional constraints on service of process are that it must be reasonably calculated to give the served party knowledge of the attempted exercise of jurisdiction

We think it clear that Local 136's and Mrs. DeAngelo's connections with the Fund were sufficiently close and regular to permit service upon Mrs. DeAngelo to act as service upon the Fund. Although the Fund had a "welfare representative" within the Commonwealth (who we assume would also have been a proper object of service within the terms of Pa. R. Civ. P. 2157(a)), his duties were actually performed by Samuel Jacobs, Local 136's business agent, and Mrs. DeAngelo, Jacob's secretary. In fact, *all* of the Fund's rather substantial activities in this state were carried out through the Local 136 office and Mrs. DeAngelo. The facts render the service made in this case clearly proper within the terms of Pa. R. Civ. P. 2157(a).

Appellant also contends that the trial court abused its discretion in refusing to open the judgment because it had offered two meritorious defenses to the action: (1) that Farrell's injury was not covered by the Fund because it was incurred in the course of his employment; and (2) that arbitration was the sole method of resolving disputed claims. We agree with the trial court that both of these defenses are of doubtful validity and do not justify opening the judgment. Farrell's claim against the Fund was pending for five years before he filed suit, and all indications were that the Fund would continue to delay any action with respect to the claim. When a claim is pending as long as this one was, we agree with the trial court that the onus of the failure to investigate and dispose of the merits of the claim rests primarily on the Fund. They neither answered his claim nor did anything else to dispose of it, and they should not now be heard to complain of Farrell's failure to institute arbitration.

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and a chance to be heard. *Spica v. International Ladies Garment Workers Union*, 388 Pa. 382, 130 A.2d 468 (1957). Restatement, Conflict of Laws, §75. It is clear that Pa. R. Civ. P. 2157(a) is well tailored to meet these requirements and that any service which is valid within the terms of the rule meets the constitutional requirements. See *Quinn v. Pershing*, 367 Pa. 426, 80 A.2d 712 (1951).

We must also note that Farrell did not take a "snap judgment" in this case. Judgment by default was taken only after the Fund studiously ignored the complaint for over three months and failed to file an answer after being repeatedly asked to do so.

Since we find that the Court of Common Pleas of Philadelphia soundly exercised its discretion, the order is affirmed.

Mr. Justice Jones filed a dissenting opinion in which Mr. Justice Cohen joins.

DISSENTING OPINION

Filed: October 9, 1970

JONES, J.

Several principles of law are well-settled in Pennsylvania with respect to the opening of a judgment. In *Carrier v. William Penn Broadcasting Co.*, 426 Pa. 427, 429, 233 A. 2d 519, 520 (1967), we stated that "[a] petition to open a [default] judgment is an appeal to the equitable side of the court, and the petition must establish equitable considerations which convince the court that justice would best be served by opening the judgment." *Accord, e.g., Kramer v. Philadelphia*, 425 Pa. 472, 229 A. 2d 875 (1967); *Richmond v. A. F. of L. Medical Serv. Plan of Phila.*, 415 Pa. 561, 204 A. 2d 271 (1964). More specifically, "relief will be given to one against whom a default judgment has been taken where a petition is promptly filed, the default reasonably explained or excused, and a defense shown to exist upon the merits. . . ." *Wheel v. Park Bldg.*, 412 Pa. 545, 546, 195 A. 2d 359, 360 (1963). *See* 8 *Standard Pa. Prac.* Ch. 33, §250 (1961). Finally, because a petition to open judgment is addressed to the sound discretion of the court below, we will not disturb that court's disposition of the petition in the absence of either an abuse of discretion or an error of law. *Wenger v. Ziegler*, 424 Pa. 268, 226 A. 2d 653 (1967); *Ehnes v. Wagner*, 388 Pa. 102, 130 A. 2d 171 (1957).

With these standards in mind, we initially must consider the basis for the lower court's finding that the Social Security Fund was properly served with process at the Philadelphia office of Local 136. That office was simply a conduit for the transmission of claims to the Fund, with Local 136 serving as the liaison between the Fund and the local union members. In order to facilitate communications, the Fund regularly appoints a union member as welfare representative, who works from the local union office, but who is paid by the Fund and who may be discharged by the Fund. Notwithstanding the Fund's protestations to the contrary, and the fact that these services also benefit the union members, the record clearly establishes that the duties of the welfare representatives are performed for the Fund.

The requirements of due process of law mandate that our interpretation of *Pa. R. Civ. P.* 2157(a) be such that a defendant will be given adequate notice and opportunity to defend against the action. *Simon v. Craft*, 182 U.S. 427 (1901); *Quinn v. Pershing*, 367 Pa. 426, 80 A. 2d 712 (1951). We must consider the particular facts of the case at bar to determine whether the record can support the conclusion that the relationship between Local 136 and the Fund "was such as to reasonably assure that there was due notice of a judicial proceeding in the instant case." *Spica v. International Ladies Garment Workers' Union*, 388 Pa. 382, 395, 130 A. 2d 468, 474 (1957). *See Namie v. DiGirolamo*, 412 Pa. 589, 195 A. 2d 517 (1963).

It is clear on the state of this record that Local 136 cannot be considered as operating under the auspices of the Fund, and neither does Local 136 exercise any control or direction over the business of the Fund. Rather, it appears that both of these organizations function as subsidiaries of the Union. It is arguable that, because both the Fund and Local 136 operate to effectuate the purposes of the Union, service of process upon either one of them could be effective service upon the Union. See *Giuliano v. Alitalia Airlines, Inc.*, 218 F. Supp. 78 (E. D. Pa. 1963); *Miller v.*

Kiamesha-Concord, Inc., 420 Pa. 604, 218 A. 2d 309 (1966); *Myhalyk v. Lewis*, 398 Pa. 395, 158 A. 2d 305 (1960); *Wilson v. Northern Ins. Co.*, 211 Pa. Superior Ct. 155, 235 A. 2d 458 (1967). However, this is very different from claiming, as does Farrell, that service at the office of Local 136 constitutes an effective service of process upon the Fund.

Certain duties, purely clerical, are performed at the Philadelphia office of Local 136, but no one at that office has the power to bind the Fund in any way or to exercise any discretion in the performance of these clerical duties. I am of the opinion that the relationship between the Philadelphia office of Local 136 and the New Jersey office of the Fund renders the instant case more closely akin to *Miller v. Kiamesha-Concord, Inc.*, 420 Pa. 604, 218 A. 2d 309 (1966), than to *Spica v. International Ladies Garment Workers' Union*, 388 Pa. 382, 130 A. 2d 468 (1957). Farrell's service upon Mrs. DeAngelo of a copy of his complaint was not sufficient service of process to give the Fund an adequate notice and opportunity to be heard. The default judgment which was entered on April 30, 1968, should be opened and the Fund permitted to plead responsively.

In view of my conclusion that the court below erred in denying opening of the judgment, I would not reach the other issues raised by the Fund.

MR. JUSTICE COHEN joins in this dissent.

APPENDIX B

OPINION OF THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY

Filed: March 27, 1969

ALEXANDER, J.

This case was before the Court upon the Petition and Rule of the defendant to strike the plaintiff's judgment and/or to order the plaintiff's judgment opened. Following oral argument, and after careful study and consideration of the record and the Briefs of the attorneys, this court entered an Order dismissing the said defendant's Petition and Rule.

On December 9, 1963, the plaintiff, Frank J. Farrell, was seriously injured in an accident at premises 3001 West Allegheny Avenue, Philadelphia, Pennsylvania, at a restaurant known as the "Pub".

For the purpose of this proceeding, the principal injury suffered by the plaintiff as a result of the accident was the loss of sight in both eyes, and/or the industrial loss of the use of both of his eyes. Likewise, for the purpose of this proceeding, the plaintiff incurred medical expenses for the treatment of his injuries totalling approximately $3,000.

The plaintiff has been unable to work since the date of the said accident, and at the time of the accident he was a member in good standing of the defendant union, The Distillery, Rectifying, Wine and Allied Workers' International Union of America, AFL-CIO, with offices at 918 Bankers Securities Building, Philadelphia, Pennsylvania. The plaintiff was an employee of Joseph E. Seagram & Sons, Inc., on the date of the accident.

Prior to the date of the accident plaintiff's employer, Joseph E. Seagram & Sons, Inc., entered into a written contract which obligated the defendant union to issue a

health and accident insurance policy for the benefit of the plaintiff and others. This insurance contract was in effect on the date of the plaintiff's accident, and administered by the defendant Board of Trustees of the Social Security Fund of the defendant union.

The insurance policy in question provides for the payment of $10,000 to the individual insured, the plaintiff in this case, for the loss of sight of both eyes and/or for the loss of the industrial use of both eyes. The policy also provides for the payment of all medical bills incurred as a result of injuries sustained by the insured, and for the payment of disability benefits of $65 per week, during a period of total disability.

Due to the defendant's failure to act upon and to adjudicate the plaintiff's insured claim over a period of some five years, during which time the plaintiff was totally disabled, the plaintiff was obliged to file a lawsuit for the enforcement of his claim against the defendant in 1968. Suit was filed in the Court of Common Pleas of Philadelphia on January 9, 1968, and the defendant was served with a copy of the Complaint on February 2, 1968, at its Philadelphia office, 918 Bankers Securities Building. The Sheriff's Affidavit of Service establishes that a true and correct copy of the plaintiff's Complaint was served upon one "Miss DiAngelo, the agent/person for the time being in charge of the defendant's usual place of business at Room 918, Bankers Securities Building, Juniper & Walnut Streets, in the County of Philadelphia, . . . on February 2, 1968 at 10:30 o'clock A. M.".

The principle issue raised by the defendant in support of its motion to strike the plaintiff's judgment in this case, is that the aforesaid service in Philadelphia at the office of the defendant union, was ineffective service and that the Court did not obtain jurisdiction of the defendant by the said service.

Pa. Rule of Civil Procedure 2180 provides that service may be made upon corporations or similar entities by service upon an agent or person for the time being in

charge of ". . . any office or usual place of business of the corporation or similar entity".

The defendant argues that service upon the office of the union is not valid service upon the Board of Trustees of the Social Security Fund of the union, and that the only business office of the said Social Security Fund where effective service may be made is premises 707 Summit Avenue, Union City, New Jersey.

The depositions in support of the defendant's Petition and Rule establish that the Social Security Fund of the union is administered by six trustees, all of whom reside in New Jersey or New York, and that the principal records pertaining to the Social Security Fund of the union are kept at the Union City, New Jersey office.

However, the record also establishes that the Social Security Fund of the Union has a benefits representative who uses the office in Philadelphia, and who is in charge of certain administrative work on behalf of the Social Security Fund, and on behalf of the union members whose dues are paid to the Philadelphia office.

The plaintiff in this case always utilized the Philadelphia office for his business transactions with the union, including the payment of union dues over the years.

The forms for benefits payable by the Social Security Fund, are mailed to the union members by the Philadelphia office, and are returned at that office where they are reviewed by the Philadelphia representative of the Social Security Fund, who, in turn, forwards the completed application forms to the principal office of the Social Security Fund, in Union City. All inquiries concerning benefits payable from the Fund are channelled through the Fund's representative at the local office of the union, and this representative serves as a liaison between the individual members and the Trustees of the Social Security Fund.

The individual upon whom service was made in this case, Miss. DiAngelo, is primarily employed by the defendant-union. However, the record establishes that a note-

book record of the names of the union members, as well as information concerning the payment of benefits from the Social Security Fund, is kept at the Philadelphia office where the service in question was made. It should be noted that all benefit checks which are payable to the individual union members, are mailed to the local office of the union (in this case the Philadelphia office), where they are received by the local representative of the Social Security Fund, who, in turn, either delivers the benefit checks to the individual members, or sees that they are mailed to those members.

The notebook record in question, which is a part of the record in this case, and which is kept at 918 Bankers Securities Building, is entitled, "Property of Social Security Fund." Moreover, the local representative of the Social Security Fund of the union, Harry Newman, is paid by the Social Security Fund, and as noted, his principal functions as an employee of the Social Security Fund are to oversee the individual applications for benefits of the members through the Philadelphia office, and to follow through with the delivery or mailing of benefit checks to the members of the union who are in the Philadelphia district. As noted, the plaintiff in this case always paid his dues to the Philadelphia office, and all of his contacts as a union member were with that office.

There is no question but that the record establishes that the Social Security Fund of the defendant-union channelled its business activities through the Philadelphia office, where the service in question was made, and that certain of its records, regarding the application for and the payment of benefits to union members, were kept at the Philadelphia office.

In view of these facts, this court was confident in ruling that the disputed service in question was a valid service upon the Social Security Fund of the union, and that the court thereby obtained jurisdiction in this dispute. Clearly, the record establishes that the Philadelphia office was a ". . . usual place of business . . ." of the Social Security

Fund of the union. Cf. *Canter v. American Honda Motor Corporation*, 426 Pa. 38 (1967); *Monaco v. Montgomery Cab Company*, 417 Pa. 135 (1965); *New v. Robinson-Houzhian Optical Co.*, 357 Pa. 47 (1947); *Shambe v. Delaware & Hudson RR Co.*, 288 Pa. 240 (1927).

The defendant also contends that the judgment should be stricken on the basis of Pa. Rule of Civil Procedure 2082, which requires special notice (by Registered Mail under the Philadelphia Rule) to a party who has not been personally served or has not appeared as a party in an action, prior to the entry of a default judgment against such party.

Although it is questionable, whether or not Pa. R.C.P. 2082 is applicable in this case, in view of the conclusion of this court that proper service was made upon the defendant at a usual place of business of the defendant, the record establishes that following the filing of the plaintiff's Complaint in this case, plaintiff's counsel advised the Social Security Fund of the defendant-union, on February 27, 1968, of the plaintiff's intention to enter judgment in this case, should the defendant fail to file an appearance in the case within twenty days. This notice was sent by Certified Mail to the principal office of the Social Security Fund in Union City, New Jersey. Thereafter, plaintiff's counsel sent six additional letters to the trustees of the Social Security Fund of the union, further advising them of the pendency of the plaintiff's claim and law-suit, and asking their cooperation and attention to this important matter.

The defendant's failure to respond to the plaintiff's Complaint and to the plaintiff's notice that judgment would be entered in the case, resulted in the entry of a default judgment by the plaintiff and against the defendant on April 30, 1968, and on the same date, the plaintiff assessed damages in this case as against the defendant in the amount of $18,118.49.

Following the entry of the plaintiff's judgment, the defendant filed its motion to strike the judgment or to have the judgment opened.

As indicated, this court likewise refused to open the plaintiff's judgment for numerous reasons.

First, the defendant was unable to substantiate its position that it had a meritorious defense to the plaintiff's law-suit. Although the insurance coverage in question applies only to non-occupational injuries and sickness, it is clear that the duty exists upon the trustees and administrators of the Fund to make an independent determination regarding whether or not the plaintiff's injuries resulted from a non-occupational accident. The defendant throughout the five year period when this claim was pending prior to the filing of the instant law-suit, totally failed to carry out this responsibility of determining whether or not benefits should be paid to the plaintiff on the basis that his injuries resulted from a non-occupational action.

The fact that the plaintiff has filed a Workmen's Compensation claim for his injuries, which claim has never been adjudicated, does not relieve the defendant of its responsibility of passing upon the insured claim of the plaintiff. Moreover, the plaintiff has agreed to subrogate any right which he may have under the Workmen's Compensation Law, in favor of the defendant.

Secondly, although the plaintiff's claim is subject to arbitration in accordance with the provisions of the insurance contract, it is clear that the defendant, based upon its continuous silence and inaction in regard to the plaintiff's claim over a period of some five years prior to the filing of this law-suit, has totally ignored its responsibility to arbitrate this claim in accordance with the provisions of the contract, and clearly, to require the arbitration of this claim at this late date would be unreasonable in the light of the defendant's ignorance of its responsibility in this matter.

Furthermore, in light of the record of correspondence and written notice of the plaintiff's intention to pursue his rights in this law-suit, including his right to enter a default judgment, which was done after the passage of some three

months of non-recognition on the part of the defendant of the plaintiff's Complaint, the defendant's argument that it was mislead into believing that plaintiff's counsel would take no further action in regard to the law-suit, is clearly without merit.

Accordingly, this court entered an Order dismissing the defendant's Petition and Rule to strike the plaintiff's Judgment and/or to open that Judgment and to let the defendant into a defense.

/s/RAYMOND PACE ALEXANDER, J.

APPENDIX C

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution:

Amendment XIV:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the priviliges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Pennsylvania Rules of Civil Procedure:

Rule 2180. Service of Process

(a) Service of process within the county in which action in instituted shall be made upon a corporation or similar entity by the sheriff of that county by handing a [true and attested] copy thereof, attested by the prothonotary or sheriff or certified by the plaintiff to be a true copy,

(1) to an executive officer, partner or trustee of the corporation or similar entity; or

(2) to an agent or person for the time being in charge of, and only at, any office or usual place of business of the corporation or similar entity; or

(3) to an agent, authorized by appointment to receive service of process; or

by delivering an attested or certified copy thereof in

the manner provided by law to a statutory agent authorized to receive service of process.

(b) The plaintiff shall have the right of service in any other county by having the sheriff of the county wherein the action was instituted deputize the sheriff of any other county wherein service may be had.

(c) If service cannot be made under any of the methods set forth in subdivisions (a) or (b) of this rule, the court upon petition shall authorize service by registered mail directed to the Secretary of the Commonwealth and to the corporation or similar entity at its last registered address or principal place of business, or by publication as the court may direct. Adopted Nov. 26, 1943, Eff. Aug. 1, 1944. Amended March 27, 1956, Eff. July 1, 1956.

SUPREME COURT, U. S.

Supreme Court, U.S.
FILED
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In The

Supreme Court of the United States

October Term, 1970

No. 1202

THE BOARD OF TRUSTEES OF THE SOCIAL SECURITY FUND OF THE DISTILLERY, RECTIFYING, WINE AND ALLIED WORKERS INTERNATIONAL UNION OF AMERICA, AFL-CIO,

Petitioner,

v.

FRANK J. FARRELL,

Respondent.

BRIEF CONTRA TO PETITION FOR A WRIT OF CERTIORARI

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BRIEF CONTRA TO PETITION FOR WRIT OF CERTIORARI

Counterstatement of the Case

A. Factual Background

On December 9, 1963, Frank J. Farrell suffered serious and permanent injuries, including brain damage, paralysis, and industrial loss of use of both eyes, which have permanently disabled him to date. At the time of the accident, Frank J. Farrell was covered under a Health and Accident policy issued by the Board of Trustees of the Social Security Fund of Distillery, Rectifying, Wine and Allied Workers' International Union of America, AFL-CIO, hereinafter referred to as "Social Security Fund".

The Social Security Fund investigated the claim presented by Frank J. Farrell and determined that it was a valid claim, and in fact forwarded several benefit checks to Frank J. Farrell (R122a-123a). Thereafter, for no valid reason, the Social Security Fund refused to pay to Frank J. Farrell what was rightfully due him under the provisions of the Health and Accident policy issued to him.

It should be noted that all contact between Social Security Fund and Frank J. Farrell and in fact all other policyholders and/or beneficiaries under the Social Security Fund Health and Accident policies was made at and through an office located in Room 918 Bankers Securities Bldg., Juniper and Walnut Sts., in the County of Phila., Commonwealth of Penna. The Social Security Fund had its "Welfare Representative", one Harry Newman, work out of the office at Room 918

Bankers Securities Bldg., Philadelphia, Pa., where all the claims were made, handled, forwarded, and checks issued and received. Said Harry Newman was employed and paid by the Social Security Fund for his handling of the Funds' matters in the Philadelphia area. It is important to note that the duties of the Welfare Representative, Harry Newman, were in actuality carried out by Samuel Jacobs and Angie DeAngelo, and the records of the Social Security Fund were kept by Miss DeAngelo at 918 Bankers Securities Bldg. office.

On January 9, 1968, legal action was instituted on behalf of Frank J. Farrell against the Social Security Fund in the Common Pleas Court of Philadelphia. On February 2, 1968, the Sheriff of Philadelphia County properly served the Social Security Fund at the office in which the Fund conducts its business in Philadelphia and where the Funds' records were kept by Angie DeAngelo, by serving a copy of the Complaint on Miss DeAngelo, who was the only person in the said office, and the person that was in charge of said office at the time. On the same day, February 2, 1968, Samuel Jacobs and Angie DeAngelo forwarded the Complaint filed in this action to the home office of the Fund (R132a). Irving Sklansky, Manager of the Social Security Fund at the home office, received the Complaint filed in this action in early February 1968 on behalf of the Fund (R187a). Thereafter, there were numerous telephone conversations and letters between Irving Sklansky, Manager of the Fund at the home office, and Fred Lowenschuss, Esq., attorney for Frank J. Farrell (R188a-196a, 239a-243a).

On January 16, 1968 Fred Lowenschuss, Esquire spoke with Irving Sklansky and informed him of the suit which was instituted in the Common Pleas Court of Philadelphia County, January Term, 1968, No. 598. Mr. Sklansky requested an extension of time in which to defend the action in order to work out a voluntary payment on behalf of the fund, or, in the alternative, to have the matter submitted to Arbitration. Mr. Lowenschuss wrote to Mr. Sklansky on January 16, 1968 confirming the telephone conversation (R239a). On February 7, 1968 Mr. Lowenschuss again wrote to Mr. Sklansky requesting information concerning Mr. Farrell's claim (R240a). On February 27, 1968 Mr. Lowenschuss again wrote to Mr. Sklansky giving the Fund twenty (20) days in which to defend the action pending in the Common Pleas Court of Philadelphia County, January Term, 1968, No. 598 (R42a, 241a). On March 19, 1968 Mr. Lowenschuss again wrote to Mr. Sklansky sending him the report of Mr. Farrell's doctor stating that he had been permanently disabled since the accident on December 9, 1963 and again requesting payment under the policy (R44a). On March 29, 1968 Mr. Lowenschuss again wrote to Mr. Sklansky requesting that Mr. Sklansky advise him what arrangements are being made to pay the claim of Mr. Farrell (R47a). On April 9, 1968 Mr. Lowenschuss again wrote to Mr. Sklansky giving him ten (10) days in which to have his attorneys enter their appearance and defend the case pending in the Court of Common Pleas of Philadelphia County, January Term, 1968, No. 598, and that failure to do so would result in judgment being entered against the defendant and execution issued (R47a, 48a).

It was not until April 30, 1968 (21 days later) that judgment was entered in favor of the plaintiff and against the defendant. Mr. Lowenschuss wrote to Mr. Sklansky on May 1, 1968 advising him of the entry of judgment and requesting arrangements be made within one week to pay off the judgment of $18,118.49 (R243a).

It is important to note that in all proceedings in the Lower Court and in the Pennsylvania Supreme Court, no constitutional or federal question was ever raised by the Social Security Fund.

Questions Presented

A. CAN A FEDERAL OR CONSTITUTIONAL QUESTION BE RAISED FOR THE FIRST TIME IN THE UNITED STATES SUPREME COURT IN A CASE OF THIS NATURE?

B. WAS THERE A VIOLATION OF DUE PROCESS?

Reasons for Denying the Writ

A. THE SOCIAL SECURITY FUND NEVER RAISED A FEDERAL OR CONSTITUTIONAL QUESTION AND/OR CLAIMED A DENIAL OF DUE PROCESS IN ANY OF THE STATE COURT PROCEEDINGS.

B. THE REQUIREMENT OF DUE PROCESS IS "NOTICE AND OPPORTUNITY TO BE HEARD."

The Social Security Fund admits receiving the suit papers and Complaint filed in this case, and in fact requested a reasonable extension of time

in order to either make a voluntary payment or in the alternative to submit the matter to arbitration. There were numerous phone calls and letters exchanged between counsel for Frank J. Farrell and the Manager of the Social Security Fund. The Social Security Fund had ample notice and more than 90 days in which time to defend this action. They had over four years in which time to investigate this matter and determine the validity of the claim. In fact they did determine that Frank J. Farrell had a valid claim and was entitled to collect under the provisions of the Fund.

Conclusion

The Social Security Fund through its' attorneys in its' Brief on page 7 have admitted that throughout the proceedings in the State Court, they have failed to raise any constitutional question and/or federal question and/or objection to "due process." Furthermore, "due process" was rigidly adhered to in this case, and the Social Security Fund had complete and full notice of the claim against it and more than ample opportunity to defend the action and/or to come in and be heard. Furthermore, the Social Security Fund has acknowledged that the Claim of Frank J. Farrell is valid and that in actuality the Social Security Fund has no defense to said claim.

The Petition for Certiorari should be denied with costs and counsel fees and expenses assessed against the Social Security Fund.

Respectfully submitted,

s/ Fred Lowenschuss
s/ Edward M. Snyder
Attorneys for Respondent

Snyder & Lowenschuss
On the Brief